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IN THE

Supreme Court of the United States

October Term, 1955

No. 578

BESSIE DOPCUS, Intervenor,

Appellant,

—v.—

CITY OF WEST PALM BEACH, FLORIDA, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

MOTION OF CITY OF WEST PALM BEACH, FLORIDA, APPELLEE, TO DISMISS APPEAL

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CITY OF WEST PALM BEACH, FLORIDA, *et al.*,

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MOTION OF CITY OF WEST PALM BEACH, FLORIDA, APPELLEE, TO DISMISS APPEAL

The City of West Palm Beach, Florida, Appellee in the above-entitled cause, moves to dismiss the appeal on the following grounds:

I. The Notice of Appeal Fails to Comply with the Requirements of Rule 10 of the Supreme Court.

Paragraph 1 of Rule 10 of the Supreme Court Rules provides that a notice of appeal must be filed in the form prescribed by said Rule.

(a) Appellant's notice of appeal fails to specify the statute under which the appeal to this Court is taken and, therefore, does not comply with paragraph 2(a) of said Rule 10.

(b) Appellant's notice of appeal is not concise and fails to express the questions presented by the appeal in the

terms and circumstances of the case and, therefore, does not comply with paragraph 2(c) of said Rule 10. The questions are stated with such undue generality that it is not possible to determine the precise questions which are sought to be presented.

Said paragraph 2(c) further provides that a failure to comply with these requirements will be a sufficient reason for dismissing the appeal.

For the Appellant's failure, as stated above, to comply with the requirements of said Rule 10, this appeal should be dismissed.

II. Appellant Fails to Present Any Grounds Establishing That the Federal Questions Are Substantial.

Appellant has made no attempt to comply with the requirements of paragraph 1(e) of Rule 15. Her Jurisdictional Statement fails to set forth the grounds upon which it is contended that the alleged federal questions are substantial.

For Appellant's failure to comply with the requirements of said paragraph 1(e) this appeal should be dismissed pursuant to the provisions of paragraph 1(a) of Rule 16.

III. No Substantial Federal Question Is Presented by the Attempted Appeal.

Appellant's Jurisdictional Statement sets forth on pages 9 to 11, inclusive, ten (10) questions to be decided by this Court. But a mere reading of these questions is sufficient

to show that no federal question whatever is presented or claimed under any of the questions with the exception of questions numbered 7 and 8. All of the other questions relate solely to matters arising under the laws and Constitution of the State of Florida, and there is no showing in her Jurisdictional Statement that the decision of the Supreme Court of Florida has deprived her of any right which is protected by the Constitution of the United States.

In such circumstances the decision of the Supreme Court of Florida is final and conclusive, and is binding on the federal courts. *Kovacs* v. *Cooper*, 336 U. S. 77, 84, 69 S. Ct. 448, 93 L. Ed. 513; *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32-33, 44 S. Ct. 432, 68 L. Ed. 885.

Question numbered 8 fails to state the particular provisions of the Constitution and laws of the United States which are violated. Question numbered 7 refers to the due process clause in the Fourteenth Amendment of the Constitution of the United States. But no where in the Jurisdictional Statement or in any pleadings filed by Intervenor in the courts of Florida is there any statement whatever of the grounds on which she claims that she has been deprived of any property without due process. There is no showing whatever that she has or will suffer any injury.

Appellant on page 5 of her Jurisdictional Statement under paragraph (iv) lists certain cases as sustaining the alleged jurisdiction of this Court to hear this appeal. Of the decisions of this Court so cited, not a single one involved appeal or certiorari from a state court; each such case was an appeal from an inferior federal court and involved an action by bondholders against a public entity to

collect on bonds or coupons, but in none of these cases had the validity of the bonds or coupons in question been passed upon by the state courts. None of these decisions has the remotest connection with any question presented in this attempted appeal.

The decisions of state courts cited by Appellant have no weight in determining whether there is jurisdiction in this Court to entertain this appeal.

There is no attempt in the Jurisdictional Statement to show the applicability of any of the cases cited by Appellant to any question presented in this attempted appeal or the reasons why the questions presented are so substantial as to require consideration by this Court.

WHEREFORE, the City of West Palm Beach, Florida, Appellee in the above-entitled cause, respectfully moves that the appeal herein be dismissed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 578

BESSIE DOPCUS, Intervenor,
APPELLANT,
vs.
CITY OF WEST PALM BEACH, FLORIDA,
vs.
STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS, OF SAID CITY OF WEST PALM BEACH, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN,
APPELLEES.

} ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

The Appellant and Intervenor, BESSIE DOPCUS, contends that the Motion to Dismiss fails to set forth any error which would affect the substantial rights of the parties. Since the Appellee, THE CITY OF WEST PALM BEACH, concedes in said Motion that Federal questions were raised in the State Courts; considered and determined in the Final Decree from which this Appeal is taken; it is apparent that said Appellee has waived any further right or authority to question the jurisdiction of the United States Supreme Court to determine the questions involved, pursuant to Section 2106 of the Judicial Code.

2. The Motion to Dismiss fails to challenge the allegations set forth in paragraph 3 of the Jurisdictional Statement. The Supreme Court of the United States held in the case of People Ex Rel. Bryant v. Zimmerman, 278 U. S. 63, 73 L. ed. (Adv. 52) 49 Sup. Ct. Rep. 61, as follows:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.[2]"

3. For further authorities see County of Dixon v. Field, 111 U. S. 83; 28 L. Ed. 350; Chesebro v. Los Angeles County Flood Control Dist., 59 S. Ct. 622, 306 U. S. 459, 83 L. Ed. 921; Amoskeag National Bank v. Ottawa, Ill., 105 U. S. 667; 26 L. Ed. 1204; Hayes v. Holley Springs, 114 U. S. 120; 29 L. Ed. 81; 5 S. Ct. 785; William Hill, plaintiff in error v. Memphis, Mo., 134 U. S. 198; 33 L. Ed. 887; 10 S. Ct. 562.

4. The Motion to Dismiss, also has the effect of admitting the flagrant and arbitrary abuse of power exercised by the Appellee as set forth in the Jurisdictional Statement. The City admits that 4,000 registered voters, including the Appellant, were denied the right to petition the City government for a referendum before attempting to issue and sell Revenue Bonds in the sum of $8,500,000.00. The Appellant contends that she was denied the right to vote on this measure; and that this arbitrary and unreasonable authority exercised by the City is an infringement on the Rights of local self-government.

5. The Supreme Court in Kiegley v. Bench, etc., 89 p. (2d) 480, referred to the rights of the People to express themselves at the polls as,

> "Inherent in our Democracy. They are basic in representative government. They are fundamental in our Constitution, and safeguarded in our statutes. ... The prevailing opinion brushes them aside and recognizes in little appointive officers of the city dictatorial ideas in plain derogation of the organic Law."

6. Another State decision precisely in point is that of Dickson v. Hardy, 177 La. 447; 148 So. 674, held as follows:

> "Charter provision, authorizing submission of 'any proposed ordinance' to electorate of City, held not limited to legislative, as distinguished from administrative, ordinances."

7. The Appellee fails to challenge or deny the allegations set forth in paragraph 4, page 10, of the Jurisdictional Statement, where it is contended that the Ordinance and Final Decree would authorize the City to issue and sell an unlimited number of Revenue Bonds, in unlimited amounts in the future, in addition to the $14,250,000. These Revenue Bonds which would be issued in the future, would be in effect, allowing the State to emit bills of credit and would be a violation of the Constitution of the United States. This is unbridled authority. It is the usurpation of powers neither authorized by the State Constitution nor the Statutes. This authority to issue bonds in unlimited amounts and unlimited numbers in the future, would impair the obligations of the Bond Contracts represented by the issue of $14,250,000. If this were permitted these Bonds would become a lien on the City property and would injure the Appellant and other taxpayers.

8. The Appellee fails to challenge the allegations set forth in the 2nd paragraph on page 8 of the Jurisdictional Statement, and this has the effect of admitting that Section 6, Article IX of the State Constitution has been violated, and that the City Ordinance was unreasonable, arbitrary, confiscatory, and that it violated the Constitution and Laws of the United States. That a true copy of said amendment to the State Constitution is set forth on page 6 of the Jurisdictional Statement. Leading Florida decisions construing this Constitutional Amendment will be found on page 1 of the Jurisdictional Statement.

9. The United States Supreme Court held in the case of Amoskeag National Bank v. Ottawa, Ill., 105 U. S. 667; 26 L. Ed. 1204:

> "The construction uniformly given to the Constitution of a State by its highest court is binding on the courts of the U. S. as a rule of decision."

Judge Cooley, in his Constitutional Limitations, has this to say:

> "Acquiescence for no length of time can legalize a clear usurpation of powers where the people have plainly expressed their will and the Constitution has appointed judicial tribunals to enforce it."—7th Ed. p. 114.

See also Katzenberger v. Aberdeen, 121 U. S. 172, 7 S. Ct. 947, 30 L. Ed. 911.

10. In the Jurisdictional Statement the Intervenor contended that the Ordinance created a mortgage lien on the water plant and lands to be acquired. This would not be valid unless the question of the purchase and the issue of the Bonds was submitted to a vote of the freeholders. This is the taking of the Appellant's property without due process of law within the meaning of the

Fourteenth Amendment of the Constitution of the United States.

11. This same ordinance creates a lien on the sewage system of the City to obtain the funds with which to buy the water plant and lands. This is also the taking of property without due process of law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

12. The Appellee has failed to challenge or reply to the matters set forth in Question 9 on page 11 of the Jurisdictional Statement. Here the Appellant denies that she was granted a hearing before the Supreme Court of the State of Florida within the meaning of Section 6, Article V of the State Constitution. She was entitled to a hearing before the full court of seven justices, including the Chief Justice, but this was denied notwithstanding that she had perfected her appeal to the Supreme Court of the State. The material quotation from this Constitutional provision is set forth on page 7 of the Jurisdictional Statement.

13. The Supreme Court of the United States held in the case of Leo M. Frank, Appt. v. Wheeler Mangum, Sheriff of Fulton County, Georgia, 237 U. S. 960, as follows:

> "Where the procedure in the Supreme Court of the state is a part of the court procedure; and where an appeal is allowed by law and the appellant takes the advantage of it, he is entitled to the due process of law."

Therefore, it is very apparent that the Appellant in this case was denied the due process of law by the refusal of the seven justices to hear this cause of action.

14. The Revenue Bonds to be issued and sold by the City do not disclose that some of the money is to be used for the purchase of land which is over-flow land, and which is to be purchased for the purpose of resale. Said bonds also fail to disclose the fact that the revenue from the Water Company would not be sufficient to maintain the Water Plant and pay off the Bonds. The issue of these bonds appears to be a scheme of financing which would be a violation of Title I of the Securities Act of 1933 as amended.

15. The Courts of Florida do not have authority to validate Revenue Bonds which are not a debt against the City, and therefore the procedure validating such Bonds is void. Chapter 75 Validation of Bonds; Procedure, includes only issues of certificates of indebtedness or bonded debt. That a true copy of Section 75.02 entitled "Petitioner" is set forth in the appendix.

16. It is further represented that if this appeal is not successful, the decree of the Supreme Court from which this appeal is taken, will become final and the Appellant will be injured and great harm will result because of the sale and distribution of said bonds.

WHEREFORE this cause is humbly submitted to the Supreme Court of the United States, to take such action as it may deem equitable and just.

Respectfully submitted,

.....

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APPENDIX

Chapter 75. Validation of Bonds; Procedure

Sec.
75.061. Application of §§ 75.05 and 75.06 as amended [New].

75.02 Petitioner

Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any district established for the purpose of drainage, conservation or reclamation and including also state agencies, commissions and departments authorized by law to issue bonds may, if deemed expedient, determine its authority to incur bonded debt or issue certificates of indebtedness and the legality of all proceedings in connection therewith, including, in proper cases, any assessment of taxes levied or to be levied, the lien of such taxes, and of proceedings or other remedies for their collection. For such purpose a petition may be filed in the circuit court in such county or in the county in which such municipality or district, or any part thereof, may be located, against the State of Florida and the taxpayers, property owners and citizens of such county, municipality or district, including nonresidents owning property or subject to taxation therein. In proceedings for the validation of bonds or certificates of indebtedness issued by any of the state agencies, commissions or departments, such petition may be filed in the circuit court of the county in which the proceeds of such bond issue are to be expended, or in the circuit court of the county in which the seat of state government is situated, and such petition shall be brought against the State of Florida and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein. As amended Laws 1949, c. 25263, § 1.

Became a law without the approval of the Governor.

Filed in Office Secretary of State June 9, 1949.